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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

INTEL CORPORATION, APPLE INC.,) Case No. 3:19-cv-07651-EMC
Plaintiffs,)
v.) NOTICE OF MOTION AND MOTION OF
) ACT THE APP ASSOCIATION FOR
) LEAVE TO FILE AN AMICUS CURIAE
FORTRESS INVESTMENT GROUP) BRIEF IN SUPPORT OF INTEL AND
LLC, FORTRESS CREDIT UNION CO.) APPLE RESPECTING DEFENDANTS'
LLC, UNILOC 2017 LLC, UNILOC USA,) MOTION TO DISMISS
INC., UNILOC LUXEMBOURG)
S.A.R.L., VLSI TECHNOLOGY LLC,)
INVT SPE LLC, INVENTERGY)
GLOBAL INC., DSS TECHNOLOGY)
MANAGEMENT, INC., IXI IP, LLC, and) Date: April 23, 2020
SEVEN NETWORKS, LLC,) Time: 1:30 p.m.
Defendants.) Place: Courtroom 5
) Judge: The Hon. Edward M. Chen
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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT ACT | The App Association (“ACT”)
3 respectfully requests leave to participate in this action as *amicus curiae* in support
4 of the Intel Corporation (“Intel”) and Apple Inc. (“Apple”) respecting Fortress
5 Investment Group LLC, Fortress Credit Co. LLC, Uniloc 2017 LLC, Uniloc USA,
6 Inc., Uniloc Luxembourg S.A.R.L., VSLI Technology LLC, INVT SPE LLC,
7 Inventergy Global, Inc., DSS Technology Management, Inc., IXI IP LLC, and
8 Seven Networks LLC (“Fortress IP”)’s Motion to Dismiss Intel and Apple’s
9 Complaint for a Demanded Jury Trial (February 4, 2020) [ECF Docket Entry 111].
10 *Amicus* requests leave to help explain how the Court’s resolution of the issues
11 raised may impact small business innovators during critical stages of developing
12 new technologies for the the Internet of Things (IoT).

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14 **I. STANDARD FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

15 “[A] district court has broad discretion to appoint *amici curiae*.” *Hoptowit*
16 *v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). ““There are no strict prerequisites
17 that must be established prior to qualifying for *amicus* status although an
18 individual or organization seeking to participate as *amicus curiae* must make a
19 showing that his participation is useful to or otherwise desirable to the court.””
20 *Infineon Techs. N. Am. Corp. v. Mosaid Techs., Inc.*, No. C 02-5772 JF(RS), 2006
21 WL 3050849, at *3 (N.D. Cal. Oct. 23, 2006) (citations omitted). “An *amicus*
22 brief should normally be allowed” when, among other considerations, “the *amicus*
23 has unique information or perspective that can help the court beyond the help that
24 the lawyers for the parties are able to provide.” *Cnty. Ass’n for Restoration of the*
25 *Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash.
26 1999) (citation omitted). “District courts frequently welcome *amicus* briefs from
27 non-parties concerning legal issues that have potential ramifications beyond the
28

parties directly involved[.]” *Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003).

II. STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE*

ACT | The App Association (formerly known as the Association for Competitive Technology) is an international grassroots advocacy and education organization representing more than 5,000 small and mid-size app developers and information technology firms. It is the only organization focused on the needs of small business innovators from around the world. ACT advocates for an environment that inspires and rewards innovation while providing resources to help its members leverage their intellectual assets to raise capital, create jobs, and continue innovating. To this end, ACT has been closely monitoring recent developments in this case because of the significant implications for the interests of its members. In light of the critical role that technological innovation plays in enhancing competition and improving the welfare of consumers, ACT has a special interest in ensuring that federal law is properly applied to dynamic industries and innovative technologies.

ACT has participated as *amicus curiae* in a number of cases involving technological innovation. *See, e.g., FTC v. Qualcomm*, No. 19-16122 (9th Cir.); *Apple, Inc. v. Pepper*, 139 S. Ct. 1514 (2019); *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1549 (2017); *Samsung Electronics Co. v. Apple*, No. 15-777 136 S. Ct. 1453 (2016) ; *United States v. Apple, Inc.*, 136 S. Ct. 1376 (2016) (cert. denied); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962 (2014); *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 U.S. 23 (2003); *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001) (en banc) (per

curiam).

III. *AMICUS CURIAE*'S EXPERTISE WILL BENEFIT THE COURT

Based on its strong interest in fostering innovation and protecting the interests of app developers and information technology firms, ACT believes that its perspective will aid this Court in evaluating the motion filed by Fortress IP. Intel and Apple's Complaint pleads causes of action arising from Fortress IP's unique patent aggregation scheme that creates an unfair licensing negotiation ecosystem by packaging strong and weak patents together to charge unreasonable licensing rates. If true, the detrimental effects of these actions will be especially felt by small businesses lacking adequate resources to defend themselves. ACT has substantial knowledge and a unique perspective about these implications and submits that its participation as an *amicus* would assist the Court in assessing the "potential ramifications beyond the parties directly involved." *Sonoma Falls Developers*, 272 F. Supp. 2d at 925. Specifically, ACT is well positioned to highlight the predicted substantial impact like that alleged in the Complaint by Fortress IP would have on small business software developers and technology firms across an array of critical industries.

IV. CONCLUSION

Accordingly, ACT respectfully requests that the Court grant this Motion for Leave to Participate as *amicus curiae*, and to file the accompanying Brief in Opposition of Fortress IP's Motion to Dismiss the Intel Corporation and Apple, Inc.'s Complaint for a Jury Trial.

ACT brings this motion after conferring with Counsel for both Intel and Apple who each indicated that they do not oppose the filing of the instant motion and brief. Additionally, ACT also contacted Counsel for all named Defendants in this case. However, at the time of filing this motion, no Defendant indicated that they would consent to the instant filing. Notwithstanding, ACT has not received

notice from any Defendant that they intend to oppose ACT's request to submit an *amicus curiae*.

Respectfully submitted

Dated: March 18, 2020

ACT | The App Association
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